Civil Misc. Writ Petition no. 9349 of 1981 –old number
Civil Misc. Writ Petition no. 1349 (M/S) of 201 – new umber

Bag Singh and another ---------- Petitioners

Versus

State of Uttaranchal and others -- Respondents

Hon'ble M.M. Ghildiyal J.

Heard Sri Pankaj Purohit, learned counsel for the petitioners and learned Standing Counsel.

The petitioners have challenged the order dated 2.3.1981 passed by the District Judge, Chamoli dismissing Civil Appeal no. 78 of 1795 Bag Singh Versus State in default and order dated 1.7.1981 by which restoration application (misc. case no. 8 of 1981) was also dismissed. Under section 4 of the Public Premises Act the proceedings were started against the petitioners. The prescribed authority passed an order on 20.10.1975 for eviction of the petitioners from the land in dispute against which the petitioners filed appeal before the District Judge, Tehri as at the relevant time the District Judge Tehri was having territorial jurisdiction of district Chamoli. The petitioners filed restoration application on the ground that the appeal was filed before the District Judge, Tehri as at the relevant time the District Judge, Tehri was having jurisdiction over the district of Chamoli. Thereafter the appeal was sent to District Judge, Pauri. Again in the year 1980 the Judgeship of Chamoli was created and the appeal was sent to the District Judge, Chamoli of which the petitioners had no knowledge. Notice to the learned counsel for the petitioner was sent on 18.2.1981. The District Judge, Chamoli did not find the cause shown in the restoration application sufficient and has dismissed the restoration application against which the present application has been filed.

It is not disputed that earlier the District Judge Tehri was hearing the matter of district Chamoli. Thereafter the jurisdiction of district Chamoli was transferred with the District Judge, Pauri and later on the Judgship of Chamoli was created. Due to some misunderstanding the petitioners could

not do the effective pairvi in the case. Unfortunately in the year 1981 the writ petition was filed before Hon'ble Allhabad High Court. After the creation of Uttaranchal the writ petition has been transferred to this court. The writ petition is against the dismissal of restoration application. More than 27-28 years have passed since the proceedings were started in the year 1974-75. In my opinion, in the interest of justice it will be proper to direct the District Judge, Chamoli to decide the appeal on merit.

For the reasons stated above, the writ petition is allowed. The order datd 1.7.1981 dismissing the restoration application and order dated 2.3.1981 are quashed. Restoration application (misc. case no.8 of 1981) is allowed. Civil appeal no.78 of 1975 Bag Singh Vs. State is restored to its original number. The District Judge, Chamoli is directed to decide Civil Appeal no. 78 of 1975 Bag Singh Vs. State on merit within a period of six weeks from the date of receipt of production of this order. The officer is also directed to send a copy of this order to the District Judge, Chamoli immediately.

(**M.M. Ghildiyal J.)**

June 10, 2003
MPS